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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

In re B.K., a Person Coming Under the  
Juvenile Court Law.

George N.,  
Petitioner,

v.

THE SUPERIOR COURT OF LAKE  
COUNTY,  
Respondent;

LAKE COUNTY DEPARTMENT OF  
SOCIAL SERVICES,  
Real Party in Interest.

A148410

(Lake County  
Super. Ct. No. JV320432)

George N. petitions this court for extraordinary relief from the dependency court's denial of his request to be designated a second presumed father of B.K. pursuant to Family Code section 7612, subdivision (c), and its subsequent setting of a selection and implementation hearing, pursuant to Welfare and Institutions Code section 366.26. George contends that the court erred in finding that recognizing only two parents would not be detrimental to B.K. Because substantial evidence supports the dependency court's finding, we will deny George's petition and affirm the dependency court's orders.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. *Family Background*

B.K. was born in March 2011. Her mother's husband was present at the birth, and he is listed on the birth certificate as B.K.'s father. There is no dispute that he is B.K.'s presumed father, and we will refer to him as "Father." Mother believed that petitioner George N., her on-and-off boyfriend who visited her in the hospital the day after B.K. was born, was B.K.'s biological father, although she told a social worker who met with her shortly after B.K.'s birth that Father was B.K.'s biological father.<sup>1</sup>

At the time of B.K.'s birth, Mother was not living with Father or George; she had been living with an adult niece for about a month. Mother and B.K. lived with the niece for some time after B.K. was born. Both Father and George visited regularly with mother and B.K., and both provided necessities for the child when Mother asked for them.

At some point, Mother and B.K. began living with George in a house he shared with his mother and grandmother. The record is unclear as to when Mother and B.K. moved in, but they certainly lived in the same house with George by April 2014.<sup>2</sup> Mother's granddaughter and George's young daughter lived there as well. The adults in the house, plus Father, who lived elsewhere, shared in paying the bills. Father maintained a relationship with B.K., and saw her every day or every other day. B.K. called Father "dad" and called George her "fake dad." George referred to B.K. and his daughter collectively as his "kids" and referred to B.K. as his step-daughter. Mother and

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<sup>1</sup> Mother also identified Father as B.K.'s other biological parent on Form JV-225, "Your Child's Health and Education," which was filed with the dependency court on March 26, 2015.

<sup>2</sup> Mother testified that she began living with George when B.K. was between one and a half and two years old, which would have been in the fall of 2012 or the spring of 2013. She also said that she and George got together full-time in October 2013, at which point B.K. would have been two and a half. George testified that Mother and B.K. moved in with him at the end of April 2013 or 2014, which would have been when B.K. was two or three. In his form JV-505, "Statement Regarding Parentage," filed with the dependency court in January 2016, George stated that B.K. started living with him in April 2014.

B.K. lived with George until March 2015, when B.K. was detained in this dependency action.

B. *B.K. Is Detained in March 2015*

When B.K. was almost four, the Yuba County Health and Human Services Department filed a petition on her behalf in Yuba County Superior Court, pursuant to Welfare and Institutions Code section 300, alleging that she came within the provisions of subdivision (b) (failure to protect).

The petition alleged that Mother was arrested at a Wal-Mart store for retail theft and possession of drug paraphernalia. Mother was taken into custody, but did not disclose that B.K. was in the parking lot with George and his then six-year-old daughter. About two hours after Mother's arrest, the six-year-old was found wandering the Wal-Mart property, and B.K. was found in a vehicle with George, who was "unconscious and unresponsive until an ambulance, fire truck, and deputy sheriff arrived with flashing lights."<sup>3</sup>

The petition also alleged that Father admitted he was using methamphetamine and was unable to care for B.K.

B.K. was placed in foster care. At the detention hearing in March 2015, the Yuba County dependency court ordered B.K. detained, set a jurisdictional hearing, and ordered visitation for Mother and Father. At the jurisdictional hearing in April, the court found the allegations of the petition to be true, and ordered the case transferred to Lake County,

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<sup>3</sup> George was charged with violating Penal Code section 273a, subdivision (b), for endangering the two children. The detention report for B.K. provides details about the events. Mother was arrested at about 8:30 p.m. on February 28, 2015. The six-year-old was found at about 10:20 p.m. in the Wal-Mart store, where she told a Wal-Mart associate that she could not find her father's girlfriend, and that her father was asleep in the car in the parking lot, and she could not wake him up. The associate went with the child to the car, where George appeared to be asleep. B.K. was asleep in the back of the car. The associate tried to wake George by pounding on the windows and yelling; George did not awaken, but B.K. did, and began crying and screaming. The associate contacted the sheriff's office and emergency medical personnel. B.K.'s distress did not awaken George, though at one point he stirred, told B.K. to "shut up," and went back to sleep.

the residence of Mother and Father, who were identified as B.K.'s parents. At the dispositional hearing in July, the Lake County dependency court adjudged B.K. a dependent of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivision (b). The court ordered reunification services for Mother and Father, and ordered visitation for Mother, Father, and B.K.'s three brothers who were then about 25, 23 and 17 years old. A six-month review hearing was scheduled for December 2015.

George is not mentioned in the minutes of the detention hearing, the jurisdictional hearing, or the dispositional hearing, or in the dependency court's written dispositional findings and orders.

At some point, Mother informed the county visitation specialist that Father was not B.K.'s biological father. By the end of September 2015, the Lake County Department of Social Services (Department) had received the results of a paternity test confirming Mother's statement. Then Mother told a social worker that George was the biological father. George cooperated with paternity testing on December 1. The Department requested a continuance of the six-month review hearing to allow notice to all parties, including George, who was listed for the first time as B.K.'s alleged father. A week before the continued hearing, the Department received test results indicating that George was not the biological father.

The Department filed a status review report that day, including information about the paternity tests, and noting that Mother was currently in a relationship with George. The Department reported that George had a "significant" criminal history and was currently incarcerated "due to recent criminal activity," that he had a case history with child welfare services and that the case involved drug use, and that George had a conviction for sexual misconduct with a minor that had required him to register as a sex offender under Penal Code section 290.<sup>4</sup> The hearing was further continued to January

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<sup>4</sup> Evidence was presented that George was granted relief from the registration requirement in 2011, against the recommendation of the Lake County Probation Department.

11, 2016, at the request of the attorneys representing Mother and Father, who asked for time to review the report and discuss it with their clients.

*C. George Requests a Judgment of Parentage*

George appeared in custody at the January 11, 2016 hearing. He asked to be designated presumed father, and requested an attorney. An attorney was appointed for him, and the hearing was continued. After a further continuance, George filed form JV-505, “Statement Regarding Parentage,” on January 21, asking the court to find that he is a presumed parent of B.K. In the statement, George wrote that B.K. had lived with him for a year, during which time he paid all the bills,<sup>5</sup> that he told people that B.K. was his child and learned he was not the biological father as a result of the paternity test, that B.K. spent time with his extended family, and that he co-parented B.K. with her mother by taking her to school on alternate days, bathing her, comforting her, cooking for her, and teaching her things.<sup>6</sup> George did not seek to displace Father as presumed father, but rather to join as a second presumed father.

The hearing on George’s request was held on March 17, 2016. The dependency court established that B.K.’s counsel and the Department opposed George’s request, Father did not oppose the request as long as he remained a presumed father, and Mother had no objection to the request. In addition to testimony given that day by Father, Mother and George, the court considered the jurisdiction report from March 2015; the December 2015 status review report; George’s statement regarding parentage; an addendum report filed by the Department in February 2016; a report by the Lake County Department of Child Support Services that it was not aware of any existing orders determining B.K.’s parentage; and a brief from George in support of his request.

The Department’s addendum report included information from the earlier jurisdictional report about George’s criminal history, beginning with a drug charge in 1997 for which he was convicted and sentenced to three years probation. He violated his

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<sup>5</sup> George later admitted that he did not pay all the bills during the time Mother and B.K. lived with him.

<sup>6</sup> Mother later testified that she took B.K. to school every day.

probation in 2000 and was sentenced to 180 days in jail and three years probation. He was arrested on various drug-related charges in 2006, 2008, 2009 and 2012, which resulted in convictions, jail and prison sentences, and probation. The drugs at issue included marijuana and methamphetamine. The Department also reported that George was arrested in October 2015 on charges of being a convicted felon in possession of a firearm and ammunition, in violation of Penal Code sections 29800, subdivision (a)(1), and 30305, subdivision (a)(1).

The Department also reported that when B.K. was asked about George, she referred to him as “George” or “my other dad.” B.K. said she did not want to visit George because she wants to visit with her “real dad.” In response to questions why she did not want to visit both George and Father, B.K. said she only wanted to visit Father, and explained that Father and George do not like one another, that George “tries to fight my daddy,” and that George had “beat up” the youngest of her older brothers.<sup>7</sup>

Father testified that at the time of B.K.’s birth, he and Mother were a couple working on getting back together, and that in 2015, “when all this came about,” he and Mother decided that they would end their marriage. He said he never had a physical fight with George, and never had a heated argument with George in front of B.K.

Mother testified that she saw just one altercation between George and her youngest son, and that B.K. was not present. She testified that at the time B.K. was conceived, she was having sex with George, but not with Father, and that in view of the results of the paternity tests, she did not know who B.K.’s biological father might be. She explained that because Father was her husband and the father of her older children, she would not deprive him of status as B.K.’s father, and therefore he is listed on B.K.’s birth certificate. She described her living arrangements before and after B.K. was born, including Father’s and George’s relationships with B.K. She testified that she and Father

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<sup>7</sup> It is not clear when B.K. made these statements. They are included in the Department’s addendum report, filed with the dependency court on February 10, 2016, and do not appear in any of the Department’s earlier reports.

had tried to get back together after B.K. was born, but more recently she filed for divorce, and she and George were planning to marry.

George testified that he started a sexual relationship with Mother at the end of 2010 or the beginning of 2011, that sometimes he believed he was B.K.'s biological father and sometimes he didn't, but that it made no difference to him, "due to the fact that I love her the same." He testified that he considered himself to be B.K.'s "dad," and that he treated his daughter and B.K. the same. While Mother and B.K. lived with him, he worked doing part-time jobs. He testified that he had not set up any savings accounts for B.K., did not have health insurance for her, and did not have her listed as a beneficiary on any insurance policies. He did not have a will.

After hearing arguments from counsel, the dependency court took the matter under submission. At a later hearing, on April 18, 2016, the court outlined a tentative ruling denying George's request, gave counsel the opportunity to respond, and then adopted its tentative ruling.

Relying on *In re Spencer W.* (1996) 48 Cal.App.4th 1647 (*Spencer W.*) and *In re Donovan L., Jr.* (2016) 244 Cal.App.4th 1075 (*Donovan L.*), the dependency court opened its discussion of its tentative ruling by explaining that under Family Code section 7612, subdivision (c), which allows for the finding that a child has more than two parents, the court first had to decide whether George has shown all the elements required to qualify as a presumed parent, and then determine whether there is "an existing rather than a potential relationship between a putative third parent and the child such that recognizing only two parents would be detrimental to the child."

The dependency court assumed, without deciding, that George had met his burden to show that he qualifies as a presumed father, and focused on the second inquiry. The court summarized the evidence and concluded, "When the Court puts this altogether [sic], I question just how stable the relationship was and is between [B.K.] and [George], and I don't think that recognizing only two parents would be detrimental to the child. . . . In fact, looking at it a different way, I can see how there would be detriment recognizing two presumed fathers given all that evidence."

Only George's counsel argued in response to the tentative ruling. He addressed the court's discussion of a previous matter in which George's parental rights had been terminated as to a child, claiming that George successfully reunified with a different child in 2011, arguing that "the case [the court] referenced in which he did not [reunify with a child] was apparently offset by one in which he did." In response to the court's discussion of the charges pending against George in connection with B.K.'s detention, he noted that George "still has not been convicted in Yuba" regarding child endangerment.

The court replied that there was no evidence before it regarding the 2011 reunification, and said, "even taking that at face value, there's been a lot of water under the bridge since 2011 that does not cause me to lack confidence in my tentative decision." Accordingly, the dependency court denied George's request. In consequence, George is not eligible for reunification services for B.K. (Welf. & Inst. Code, § 361.5, subd. (a); *In re A.A.* (2003) 114 Cal.App.4th 771, 779-780.)

On May 9, 2016, a 12-month permanency planning hearing was held pursuant to Welfare and Institutions Code section 366.21, subdivision (f). The dependency court terminated reunification services for Mother and Father, ordered visitation for Mother and Father, ordered no visitation for George,<sup>8</sup> and set a selection and implementation hearing pursuant to Welfare and Institutions Code section 366.26 for October 13, 2016. This petition timely followed.

## **DISCUSSION**

### **A. *Applicable Law***

The Uniform Parentage Act, Family Code section 7600 et seq., governs this petition.<sup>9</sup> Section 7611 sets forth various circumstances in which an individual is presumed to be a child's parent. George contends, and like the dependency court we will

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<sup>8</sup> Nothing in the record suggests that George had any contact with B.K., or attempted to have any contact with her, after the events of February 28, 2015, that led to the filing of the juvenile dependency petition. Likewise, nothing in the record suggests that during the pendency of the petition, Mother, Father or B.K. ever requested that George have contact with the child.

<sup>9</sup> All further unspecified statutory references are to the Family Code.



assume without deciding, that he has raised a rebuttable presumption of paternity under section 7611, subdivision (d). (§ 7612, subd. (a) [“a presumption under Section 7611 is a rebuttable presumption”]; *Spencer W.*, *supra*, 48 Cal.App.4th at pp. 1652-1653 [for rebuttable presumption under section 7611, subdivision (d) to arise, father must establish by a preponderance of the evidence that the child was received into his home and that he publicly acknowledged paternity].)

Section 7612, subdivision (c), provides, “In an appropriate action, a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that recognizing only two parents would be detrimental to the child. In determining detriment to the child, the court shall consider all relevant factors, including, but not limited to, the harm of removing the child from a stable placement with a parent who has fulfilled the child’s physical needs and the child’s psychological needs for care and affection, and who has assumed that role for a substantial period of time. A finding of detriment to the child does not require a finding of unfitness of any of the parents or persons with a claim to parentage.”

In determining whether there is a “stable placement” the court is to consider “the ongoing source or sources of fulfillment of the child’s physical and psychological needs for care and affection.” (*Martinez v. Vaziri* (2016) 246 Cal.App.4th 373, 384 (*Martinez*)). These sources may, but need not, arise from the child’s living arrangements. (*Id.* at p. 385 [“It is this familial relationship with a parent, who has fulfilled the child’s needs for care and affection for a considerable amount of time, that modifies the phrase ‘stable placement’ and that provides the context for the trial court’s evaluation of detriment under section 7612, subdivision (c)”].)

When the current version of section 7612 was enacted, the Legislature made express findings: “ (a) Most children have two parents, but in rare cases, children have more than two people who are that child’s parent in every way. Separating a child from a parent has a devastating psychological and emotional impact on the child, and courts must have the power to protect children from this harm. [¶] (b) The purpose of this bill is to abrogate *In re M.C.* (2011) 195 Cal.App.4th 197 insofar as it held that where there are

more than two people who have a claim to parentage under the Uniform Parentage Act, courts are prohibited from recognizing more than two of these people as the parents of a child, regardless of the circumstances. [¶] (c) This bill does not change any of the requirements for establishing a claim to parentage under the Uniform Parentage Act. It only clarifies that *where more than two people have claims to parentage the court may, if it would otherwise be detrimental to the child, recognize that the child has more than two parents.* [¶] (d) *It is the intent of the Legislature that this bill will only apply in the rare case where a child truly has more than two parents, and a finding that a child has more than two parents is necessary to protect the child from the detriment of being separated from one of his or her parents.*” (Stats. 2013, ch. 564, §1, italics added; see *Martinez*, *supra*, 246 Cal.App.4th at p. 378 [discussing the 2013 revisions to section 7612, subdivision (c)]; *Donovan L.*, *supra*, 244 Cal.App.4th at pp. 1088-1092 [same].)

There is no dispute that Mother and Father are B.K.’s parents. In considering George’s claim that he should be recognized as a third parent under section 7612, subdivision (c), we apply the substantial evidence standard to the dependency court’s finding that recognizing only two parents would not be detrimental to B.K. (*Donovan L.*, *supra*, 244 Cal.App.4th at p. 1088.) The substantial evidence standard in dependency cases is the same as in other appeals: “We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court’s order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. (*In re Autumn H.* [(1994)] 27 Cal.App.4th [567,] 576.) The appellant has the burden of showing the finding or order is not supported by substantial evidence. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

#### B. *Analysis*

George argues that he presented evidence that finding only two parents would be detrimental to B.K., noting that B.K. had been living with George and “an extended family of siblings and relatives” until her detention. He argues that having two presumed

fathers would provide for additional individuals who would be responsible for B.K.'s emotional and financial support, and would provide additional relatives with whom B.K. could be placed. George also argues that the dependency court erred in finding that his relationship with B.K. was not stable, claiming that despite his recent arrests and incarcerations, he was not incarcerated during the time B.K. lived with him.<sup>10</sup>

The Department concedes that evidence shows that George cares for B.K. and may have taken her to school and thought of her as his daughter. Despite that, the Department argues that, for B.K., Father is her only father, and substantial evidence supports the dependency court's finding.

We are not persuaded by George's arguments. As an initial matter, George has not fairly summarized the facts, in violation of California Rules of Court, rule 8.452(b)(1), which requires him to "provide a summary of the significant facts, limited to matters in the record." George's statement of facts is silent as to his criminal record and his involvement in the events that led to B.K.'s detention. And although George alludes in passing to his recent arrests and incarcerations in his argument, he says nothing anywhere in his brief about facts that the dependency court specifically stated it considered: that his case history with child welfare services involves issues of drug use; that he has a long criminal history, which includes convictions for drug offenses, a weapons offense, and sex offenses involving minors, as well as pending charges of weapons offenses and pending charges of child endangerment arising from the events that led to B.K.'s detention; and that B.K. does not want to visit him, but wants to visit with her "real dad." Furthermore, George's argument that having a third presumed parent would provide additional relatives with whom she could be placed does not rest on evidence in the record, but rather on speculation. Nothing in the record suggests that any

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<sup>10</sup> We disregard George's argument that his successful reunification with his daughter shows that he is amenable to treatment and participating in services if provided to him. There is no evidence in the record as to this reunification, only statements by George's counsel's in his argument to the dependency court.

of George's relatives ever had or expressed any interest in or ability to accept placement of B.K.

B.K. refers to George as her "fake dad," and although she wants to visit Father, whom she previously saw every day or every other day, she does not want to visit George. George is just one of several adults, including Mother and Father, who participated in B.K.'s support during the one to two-year period she lived in George's home. George has had at least one physical altercation with B.K.'s brother. George has a long criminal history, including convictions for sex offenses involving minors, drug charges, and weapons charges, as well as pending charges for child endangerment and weapons possession. Drug use was at issue in the termination of George's parental rights as to one child. According to the December 2015 status review report, in about June 2015, just three months after B.K. was detained, her "foster parents reported that [she] has exceptional knowledge of 'marijuana, jail and sex.' " Later, B.K. told a social worker that before being removed from Mother, she lived with a family where other children touched her private parts.

Viewed in the light most favorable to the dependency court's ruling, this constitutes substantial evidence in support of the finding of no detriment to B.K. in recognizing just two parents (§ 7612, subd. (c)), especially in view of George's apparent failure to take any steps to establish his status as presumed father until this proceeding had been underway for nine months. Nothing in the record suggests that B.K. is suffering or will suffer any detriment from being separated from George. (See Stats. 2013, ch. 564, §1, subd. (d).) There is no indication that George and B.K. have had any contact of any kind since B.K. was detained on March 1, 2015, and that does not appear to cause B.K. any distress. She has stated that she does not want to visit George, and the Department reports that she is doing well in her current foster placement.

On this record, we conclude that the dependency court did not err in its finding, pursuant to section 7612, subdivision (c), that there is no detriment to B.K. in recognizing only two parents, Mother and Father.

### **DISPOSITION**

The petition for extraordinary writ is denied. Our decision is final as to this court immediately. (Cal. Rules of Court, rules 8.450(a), 8.490(b)(2)(A).)

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Miller, J.

We concur:

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Kline, P.J.

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Stewart, J.

A148410, *George N. v. Superior Court/In re B.K.*